IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 8212 of 2004

Between:

Union of India through Secretary, Ministry of Environment, Forest and Wild Life, Govt., of India, CGO Complex, Lodi Road, New Delhi.

..... PETITIONER

AND

1 A.Sudhakar, I.F.S., S/o Padmanabham,
Occ:Project Director, O/o Project Director (DWMA),
Karimnagar.
2 Ch.lylaiah, I.F.S., S/o Muthyalu,
Divisional Forest Officer, Warangal North.
3 The Government of A.P., through the Chief secretary,

Secretariat, Hyderabad A.P.,
4 The Principal Conservator of Forests, Aranya Bhavan,

Saifabad, Hyderabad.

(R-3 and R-4 are not necessary parties to the W.P.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying

that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of certiorari, or any other appropriate writ, order or direction, calling for the records pertaining to O.A.No.1513 of 2002 dated 24-12-2003 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void abinitio, null and void and nonest in the eye of law.

Counsel for the Petitioner:MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

Counsel for the Respondent Nos.1 and 2: MR.K.SUDHAKAR REDDY

(R-3 and R-4 are not necessary parties as per CT)

The Court made the following :

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O R D E R (Per Hon'ble Sri Justice G.Bikshapathy)

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This writ petition is filed by the Central Government assailing the order of the Central Administrative Tribunal, Hyderabad in O.A.No.1513/2002 dated 24.12.2003.

2. The matter relates to promotion to I.F.S. cadre. The respondents 1 and 2 herein are the applicants before the Tribunal. Their case before the Tribunal was that they were initially appointed to State Forest Service as Deputy Conservator of Forests and are entitled for consideration for promotion to I.F.S. under I.F.S. (Appointment by Promotion) Regulations, 1966. The respondents were considered for promotion to I.F.S. under Regulations of 1966. The selection process for appointment to I.F.S. was started under regulations of 1966 and the principles laid down in regard to zone of consideration, selection

committee meeting, vacancy position and other eligibility conditions were followed, as prescribed under the Regulations of 1966 and finally a select list was prepared in pursuance of the directions given by the Tribunal in O.A.No.48/1992.

3. It is the case of the applicants that they were included in the list of the year 1995-96 and both the applicants were appointed to Indian Forest Service with effect from 1.1.1998 and both of them were given the year of allotment as 1992, by following I.F.S.(Regulation of Seniority) Rules 1997, which came into effect from 1.1.1998. Aggrieved by the same, they approached the Tribunal for fixing the year of allotment as 1991. The learned Tribunal after referring to the relevant rules, allowed the O.A. with a direction to the authorities to allot the applicants the year of 1991 for seniority in the Indian Forest Service. Against the said order, the Central Government filed the present writ petition.

4. The learned Standing Counsel for the Central Government submits that the order of the Tribunal is wholly illegal and contrary to the law. He submits that the case of the applicants - respondents 1 and 2, was considered for promotion and they were promoted to I.F.S. on 1.1.1998, on which date, the amended rules came into force and, therefore, they were allotted the year of seniority as 1992. The learned counsel further submits that the finding of the Tribunal that old rules will apply, is not sustainable, inasmuch as the applicants were promoted after the new rules came into force. In this connection, he relied on a judgment of the Apex court in UNION OF INDIA v. S.S.UPPAL, wherein it was held as under:

"The seniority of the respondent has to be determined by the

rules in force on the date of his appointment to I.A.S. The fixation of seniority in the IAS follows appointment to the service. The year of allotment in the IAS will have to be determined according to the provisions of seniority rules which are in force at the time of his appointment. The date of occurrence of vacancy has really no relevance for the purpose of fixation of seniority in the I.A.S. The fixation of seniority is done only after an officer is appointed to I.A.S. The Central Government is competent to amend the seniority rules from time to time keeping in view the exigencies of administration.

Moreover, the appointment to IAS, after inclusion of the name of a candidate in the select list, is not automatic. Mere inclusion of the name in the panel does not confer any right of appointment. The instant case is also not a case of inordinate delay. The State Government as well as the officer concerned has to go through certain formalities before the actual appointment was made. After the vacancy had arisen on 1-2-1989, a proposal of appointment of the respondent to IAS from the State Government was put up on 14-2-1989. Thereupon, the respondent was promoted to IAS on 15-2-1989. It cannot be said that there was unusual delay in appointing him to IAS by which he could be said to have been prejudiced. The revised seniority rules that came into force on 3-2-1989, applied uniformly to all the officers who were appointed on or after that date."

5. The learned counsel submits that as per the above judgment, sitting of the selection committee is not the criteria, nor the availability of the vacancy, but the date of appointment to I.A.S., is relevant for the purpose of seniority and the rules, which are applicable to I.A.S., are equally applicable to I.F.S. Therefore, he submits that the order of the Tribunal is not sustainable.

6. On the other hand the learned counsel for the respondents 1 and 2 – applicants submits that for the last several years, the select list was not prepared for various administrative exigencies and, therefore, the meeting took place in the year 1998 for selecting the candidates for promotion to I.F.S. for the years 1992 to 1997 and because of the

lapses on the part of the Government, the respondents cannot be denied the promotion to I.F.S. cadre and that is reason why the Tribunal taking into consideration that selection process had began much prior to the coming into force of new rules, held that the year of allotment has to be fixed under the old rules and, therefore, the order of Tribunal is quite legal.

7. It is now admitted by the learned counsel for the parties that if new rules are made applicable, the year of allotment will be 1992 and if the old rules are made applicable, the year of allotment will be 1991. Therefore the issue that arises for consideration is, which rules have to be made applicable to the applicants – respondents 1 and 2 for allotment of the year for seniority?

8. It is not in dispute that the new rules came into force with effect from 1.1.1998, on which date, the respondents were promoted to I.F.S. cadre. It is also not in dispute that the entire exercise started much prior to 1.1.1998 and this was taken note of by the Tribunal while holding that the old rules would apply to the case of the applicants. The Tribunal also has taken into consideration the conduct of the Central Government in allotting the year of 1991 for seniority to other similarly situated officers in O.A.No.860/2002. The reasoning of the Tribunal at paragraph Nos.22 to 25 is relevant and the same is extracted as under:

> "22. We have gone through all the facts of the case, the material placed before us as well as the averments made by the ld. Counsel for the applicants and the respondents.
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> 23. We find sufficient strength in the arguments put forth by the ld. Counsel for the applicant in so much so that two standards cannot be applied in the case of the applicants for their selection in the Indian Forest Service. The

selection of the applicants to Indian Forest Service was made under the Indian Forest Service (Regulation of Seniority) Rules, 1968, but they have been given the year of allotment as per the new rules, namely, Indian Forest Service (Regulation of Seniority), Rules, 1997. Rule 3(3) (b) and Rule 4(4) of the Indian Forest Service (Regulation of Seniority) Rules, 1968, clearly lays down that the date of inclusion of name in the select list is to be taken into consideration for determining the year of allotment as well as seniority. By way of explanation 1 to the above rule, it has further been clarified that in respect of an officer appointed to service by promotion and in accordance with sub-rule 1 of Rule 8 of Recruitment Rules, the period of officiation in a senior post, shall for the purposes of his seniority, count only from the date of his inclusion of his name in the select list. It is, therefore, clear from these rules that what is material is the select list and since both the applicants have been included in the select list for the year 1995-96. their seniority and weightage shall be given under the Indian Forest Service under the regulations of 1966 and if according to the old rules, the applicants are to be given seniority from 1991, then it has to be given from that year and not from 1992, as has been given to the applicants by the respondents in accordance with the Indian Forest Service (Regulation of Seniority) Rules, 1997.

24. Besides, we find that in the case of Sanjeev Kumar Gupta & Ors. Vs. Union of India & Ors. – O.A.No.860/2002, where also similar point regarding seniority to 15 officers of the State Forest Service who were to be inducted into the Indian Forest Service is involved, the respondents in their counter affidavit in that O.A. have stated as under:

"The 15 officers who were appointed to IFS on the basis of their inclusion in the select lists for the relevant years have been assigned seniority strictly in terms of the Seniority Regulations then in force and no rights of the applicants have been adversely affected as a consequence thereof:

25. In the light of the above position, this O.A. is allowed with the direction to the respondent – authorities to allot the applicants the year 1991 as the seniority of the applicants to the Indian Forest Service instead of 1992, as has been allotted to them, based on the old Regulation and not 1992-93 based on the new

> Regulations. The respondents have on this basis alone, in a similar case (O.A.NO.860/2002), have filed a counter-affidavit to that effect and assigned seniority to the 15 officers, as per the old Regulations, since all those officers were empanelled in the panel of 1995-96. This direction must be complied with by the respondents within one month from the date of communication of this order."

9. Thus, as per Regulations of 1966, for determining the year of allotment as well as seniority, the date of inclusion of the names in the select list is the criteria. Therefore, the Tribunal has categorically held that pre 1998 rules would not apply to applicants, since the entire exercise was started prior to the coming into force of the new rules. It is not doubt true that they were promoted with effect from 1.1.1998, but since the entire exercise was made much prior to the said date, the finding of the Tribunal that pre 1998 rules would apply, cannot be said to suffer from any illegality. Moreover, the Tribunal also found that in case of 15 officers who were similarly situated to that of applicants, the Central Government has taken the stand that pre 1998 rules will apply and accordingly allotted the year of 1991 for seniority. Under these circumstances, we do not find any ground to interfere with the order of the Tribunal.

10. In the decision relied on by the counsel for Central Government, the matter relates to fixation of year of allotment in respect of IAS officers, but the facts herein are quite different. Therefore, the said judgment is quite distinguishable and is of no assistance to this court.

11. We do not find any ground to interfere with the order of the Tribunal and the writ petition is accordingly dismissed. No costs.

12. Petitioners shall implement the order of the Tribunal within a period of two months from the date of receipt of a copy of this order.

G.BIKSHAPATHY,J

P.S.NARAYANA,J

AVS/KM

DATE:26.04.2005

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Chief secretary to the Government of A.P., Secretariat, Hyderabad A.P.,
2. The Principal Conservator of Forests, Aranya Bhavan,

Saifabad, Hyderabad.

3.2 CD copies

4.The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

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